MICHIGAN LAW REVIEW

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NOTE AND COMMENT

THE LAW REVIEW.—With this number Volume II of MICHIGAN LAW REVIEW is completed. For the convenience of those who may wish to preserve the volume in bound form, a table of contents, consisting of a topical index and table of cases, is printed with this number.

Those in charge of the REVIEW have been much encouraged in their work by the kindly expressions of appreciation that have come from its readers. It is intended not only to maintain the REVIEW at a high standard, but to increase in every way possible its usefulness. We feel warranted in asking, now that the experimental stage has been passed, the continued coöperation of our subscribers and contributors.

It has been decided to begin the next volume in November, instead of in June, so that each subsequent volume will coincide with the college year. In accordance with the original design, however, the next volume will consist of at least eight numbers.

CITIZENSHIP AND IDENTITY OF CORPORATIONS INCORPORATED IN TWO STATES.—A novel case involving the citizenship and identity of corporations has recently been decided by the United States Circuit Court of Appeals for the fifth circuit, on appeal from the Circuit Court for the Northern District of Georgia. *Alabama and Georgia Manufacturing Co.* v. *Riverdale Cotton Mills* (1904), 127 Fed. Rep. 497.

In February, 1866, the State of Alabama passed an act incorporating the Alabama and Georgia Manufacturing Co., by which it was enacted that

James Metcalf, George Huguley, and others, "be and they are hereby made and constituted a body corporate in fact and in name, under the name, style and title of 'The Alabama and Georgia Manufacturing Co.'" The company was granted certain riparian rights respecting the Alabama shore and bed of the Chattahoochee river, at a point where that river marks the boundary between the states of Alabama and Georgia. In March of the same year the state of Georgia passed a similar act, whereby it was enacted in substantially the same words that the same persons should be and constitute a body corporate under exactly the same name, and this company was granted practically the same riparian rights on the Georgia bank of the Chattahoochee. The Alabama and Georgia Manufacturing Co. was launched forthwith, having a single set of incorporators and a single set of officers, and proceeded to install a manufacturing plant on the Chattahoochee river under the grants made by both states. In 1884 a mortgage was executed by the Alabama and Georgia Manufacturing Co., without indicating to which state it belonged, to trustees, in order to secure an issue of bonds, and in January, 1891, J. J. Robinson, one of the trustees, instituted foreclosure proceedings in the United States Circuit Court for the Northern District of Georgia, alleging that he was a citizen of Alabama and that the Alabama and Georgia Manufacturing Co. and certain other parties joined as defendants, were citizens of Georgia. Foreclosure was duly decreed, and the Riverdale Cotton Mills became the purchaser of the property and went into possession.

In May, 1901, the Alabama and Georgia Manufacturing Co. filed a bill in the proper state court in Alabama, setting up the act of the legislature of that state by which it was incorporated, and averring that it, as an Alabama corporation, was not made a party to the foreclosure proceedings in the Robinson suit, that those proceedings were null and void so far as they purported to affect its right or title in the lands and property in Alabama, and prayed a decree that it be entitled to redeem the mortgaged property. The Riverdale Cotton Mills answered and thereupon went into the United States Circuit Court for the Northern District of Georgia and obtained leave to file a bill to enjoin the prosecution of the Alabama suit. The question presented was whether or not the federal court had jurisdiction to entertain the bill. It is the decision of this case on appeal which has just appeared.

The Circuit Court of Appeals held that there were in fact two separate corporations, one the Alabama and Georgia Manufacturing Co., of Alabama, the other the Alabama and Georgia Manufacturing Co., of Georgia; that only the latter had been made a party in the Robinson foreclosure suit; and that the former was therefore as wholly unaffected by the decree in that suit as any other total stranger to the proceedings. The Alabama Company could not, it was said, have been made a party to that suit without ousting the jurisdiction of the court, since adverse citizenship was the sole ground of federal cognizance, and neither the legislative power of the state of Alabama nor the corporations themselves by their single and indivisible system of conducting business, could make possible a form of citizenship such that the federal court in Georgia might, at the instance of an Alabama plaintiff,

render a decree against the Georgia corporation which should be binding upon the Alabama corporation.

Judge PARDEE wrote a vigorous dissenting opinion, suggesting that the decision of the court looked very much like a travesty on the administration of justice. He said: "It is contended that, because the Alabama and Georgia Manufacturing Company was incorporated in the state of Georgia and in the state of Alabama, there were two distinct and separate legal entities—twins in law and in fact. If this contention be sound, then the fact that these twins in law had the same corporators, the same stockholders, the same officers, the same property and the same business requires their assimilation to the celebrated Siamese twins, so united that wherever one was the other was necessarily present, and requires the holding that whatever was the act of the one was necessarily the act of the other. And it also seems clear to me that, if they were two separate legal entities, in regard to the one plant and the one property and the one business, each was the full agent of the other and each was bound by the other's transactions . . . They should be held to be joint tenants, privies in estate, and both fully bound by the proceedings had in the foreclosure suit."

The case is particularly interesting in the light of the doctrine announced in *St. Louis and San Francisco R. R. Co.* v. *James*, 161 U. S. 545. In that case the defendant railroad company was incorporated in Missouri, and subsequently, under a statute of the state of Arkansas, it filed a copy of its Missouri articles of incorporation with the secretary of state and became thereby an Arkansas corporation. The plaintiff was a citizen of Missouri and brought suit against the defendant in the United States Circuit Court for the Western District of Arkansas, alleging diverse citizenship. The question whether the federal court had jurisdiction was certified from the Circuit Court of Appeals to the United States Supreme Court, and that court held that the federal court had no jurisdiction, on the ground that, for jurisdictional purposes, the defendant company was a citizen, not of Arkansas, but of the state of its first incorporation. In this case, then, a citizen of Missouri was not allowed to sue an Arkansas corporation in the federal court because that corporation had been first incorporated in Missouri; and yet in the case of the *Alabama and Georgia Manufacturing Co.* v. *Riverdale Cotton Mills* the court recognized the validity of a decree obtained by a citizen of Alabama against a Georgia corporation, notwithstanding that the corporation had first been incorporated in Alabama.

The basis of the distinction, foreshadowed in the former case, is clearly expressed in the latter. In the Arkansas case Judge SHIRAS, speaking for the court, said: "It should be observed that, in the present case, the corporation defendant was not incorporated as such by the state of Arkansas. The legislation of that state was professedly dealing with the railroad corporations of other states." In the Alabama case Judge MCCORMICK, for the court, said: "It abundantly appears on the face of the record in the Robinson suit and in this suit that, in order to carry out the purposes of the creation of the Alabama and Georgia Manufacturing Company, it was originally necessary, and has continued to be important, that the company should control and use the water of the Chattahoochee river, and make the same

available, by locks, dams, canals or otherwise, for manufacturing purposes generally, requiring therefor the grant of the riparian rights of the state of Alabama and of the state of Georgia to the banks and shores and bottom of that river at the point where their manufacturing plant is located; that it could not take possession of them, nor continue to use them, without the express authority of each of those states; that authority could be conferred by the creation of separate corporations of the same name and composed of the same individuals as stockholders and officers, or it could be conferred by the creation of a corporation in only one of the states, and the express statutory license in the other state authorizing the foreign corporation so created to exercise in the second state the same powers and rights which had been given it by the state of its creation. It is not claimed that the last course indicated was either taken or attempted to confer on the Alabama and Georgia Manufacturing Company the power and authority to do business in each of these states in the institution and operation of its manufacturing enterprises. It is substantially and sufficiently shown that the first course suggested was adopted, and that the two companies, acting in harmony, conducted their manufacturing enterprises."

Whether this is not a distinction without a real difference is perhaps a question. It does not seem quite sound to allow the vital matter of jurisdiction to rest upon so formal and incidental a consideration as the *method* of incorporation. The proper question would appear to be, "Is the party a corporation of the state?" rather than, "Did the party become incorporated in the state in a particular manner?" The distinction suggested in these cases seems to base the jurisdiction of the federal courts not on diverse citizenship, but upon the manner of acquiring it.

DUTY OF COURT TO LIMIT BY INSTRUCTION THE EFFECT OF EVIDENCE.—A recent case decided by the supreme court of North Carolina well illustrates the tendency of some tribunals to render decisions upon very slender technical grounds where the death penalty has been decreed, and seems to exhibit an unwarranted tenderness for the rights of the accused. The defendant was sentenced to death upon the charge of having committed a most revolting assault upon a little girl of less than ten years of age, but the supreme court granted a new trial upon a purely technical ground that could hardly be conceived to have affected the verdict of the jury. (132 N. C. 1014, 43 S. E. 830). Upon the second trial, when the defendant again received a death sentence, evidence was introduced to corroborate the prosecutrix. When the evidence was offered, the prosecuting attorney stated that it was for such purpose only, and the court said in the presence of the jury that it would be received only as corroborative evidence and not as substantive testimony. Some months after the case had been settled on appeal, the counsel for the defendant applied to the trial judge for an amendment to the case on appeal to show that it was not explained in the charge to the jury that this evidence was to be considered as corroborative only. The judge stated that he could not say with certainty whether he did so charge or not, but that he was willing that the amendment be made in the following terms: "Upon objection being made to the statement referred to in the evidence of Gunter and to the